

Calendar No. 463

108TH CONGRESS
2^D SESSION

H. R. 339

IN THE SENATE OF THE UNITED STATES

MARCH 11, 2004

Received

MARCH 25, 2004

Read the first time

MARCH 26, 2004

Read the second time and placed on the calendar

AN ACT

To prevent legislative and regulatory functions from being usurped by civil liability actions brought or continued against food manufacturers, marketers, distributors, advertisers, sellers, and trade associations for claims of injury relating to a person's weight gain, obesity, or any health condition associated with weight gain or obesity.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Personal Responsibility
5 in Food Consumption Act”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to allow Congress, State
8 legislatures, and regulatory agencies to determine appro-
9 priate laws, rules, and regulations to address the problems
10 of weight gain, obesity, and health conditions associated
11 with weight gain or obesity.

12 **SEC. 3. PRESERVATION OF SEPARATION OF POWERS.**

13 (a) IN GENERAL.—A qualified civil liability action
14 may not be brought in any Federal or State court.

15 (b) DISMISSAL OF PENDING ACTIONS.—A qualified
16 civil liability action that is pending on the date of the en-
17 actment of this Act shall be dismissed immediately by the
18 court in which the action was brought or is currently pend-
19 ing.

20 (c) DISCOVERY.—

21 (1) STAY.—In any action of the type described
22 in clause (i) or (ii) of section 4(5)(B), all discovery
23 and other proceedings shall be stayed during the
24 pendency of any motion to dismiss unless the court
25 finds upon motion of any party that particularized

1 discovery is necessary to preserve evidence or to pre-
2 vent undue prejudice to that party.

3 (2) RESPONSIBILITY OF PARTIES.—During the
4 pendency of any stay of discovery under paragraph
5 (1), unless otherwise ordered by the court, any party
6 to the action with actual notice of the allegations
7 contained in the complaint shall treat all documents,
8 data compilations (including electronically recorded
9 or stored data), and tangible objects that are in the
10 custody or control of such person and that are rel-
11 evant to the allegations, as if they were the subject
12 of a continuing request for production of documents
13 from an opposing party under applicable Federal or
14 State rules of civil procedure, as the case may be.
15 A party aggrieved by the willful failure of an oppos-
16 ing party to comply with this paragraph may apply
17 to the court for an order awarding appropriate sanc-
18 tions.

19 (d) PLEADINGS.—In any action of the type described
20 in section 4(5)(B)(i), the complaint initiating such action
21 shall state with particularity the Federal and State stat-
22 utes that were allegedly violated and the facts that are
23 alleged to have proximately caused the injury claimed.

24 **SEC. 4. DEFINITIONS.**

25 In this Act:

1 (1) ENGAGED IN THE BUSINESS.—The term
2 “engaged in the business” means a person who man-
3 ufactures, markets, distributes, advertises, or sells a
4 qualified product in the person’s regular course of
5 trade or business.

6 (2) MANUFACTURER.—The term “manufac-
7 turer” means, with respect to a qualified product, a
8 person who is lawfully engaged in the business of
9 manufacturing the product in interstate or foreign
10 commerce.

11 (3) PERSON.—The term “person” means any
12 individual, corporation, company, association, firm,
13 partnership, society, joint stock company, or any
14 other entity, including any governmental entity.

15 (4) QUALIFIED PRODUCT.—The term “qualified
16 product” means a food (as defined in section 201(f)
17 of the Federal Food, Drug, and Cosmetic Act (21
18 U.S.C. 321(f))).

19 (5) QUALIFIED CIVIL LIABILITY ACTION.—(A)
20 Subject to subparagraphs (B) and (C), the term
21 “qualified civil liability action” means a civil action
22 brought by any person against a manufacturer or
23 seller of a qualified product, or a trade association,
24 for damages, penalties, declaratory judgment, in-
25 junctive or declaratory relief, restitution, or other re-

1 lief arising out of, related to, or resulting in injury
2 or potential injury resulting from a person's con-
3 sumption of a qualified product and weight gain,
4 obesity, or any health condition that is associated
5 with a person's weight gain or obesity, including an
6 action brought by a person other than the person on
7 whose weight gain, obesity, or health condition the
8 action is based, and any derivative action brought by
9 or on behalf of any person or any representative,
10 spouse, parent, child, or other relative of any person.

11 (B) Such term shall not include—

12 (i) an action in which a manufacturer or
13 seller of a qualified product knowingly and will-
14 fully violated a Federal or State statute applica-
15 ble to the manufacturing, marketing, distribu-
16 tion, advertisement, labeling, or sale of the
17 product, and the violation was a proximate
18 cause of injury related to a person's weight
19 gain, obesity, or any health condition associated
20 with a person's weight gain or obesity; or

21 (ii) an action for breach of express con-
22 tract or express warranty in connection with the
23 purchase of a qualified product.

24 (C) Such term shall not be construed to include
25 an action brought under the Federal Trade Commis-

1 sion Act (15 U.S.C. 41 et seq.) or the Federal Food,
2 Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

3 (6) SELLER.—The term “seller” means, with
4 respect to a qualified product, a person lawfully en-
5 gaged in the business of marketing, distributing, ad-
6 vertising, or selling a qualified product in interstate
7 or foreign commerce.

8 (7) STATE.—The term “State” includes each of
9 the several States of the United States, the District
10 of Columbia, the Commonwealth of Puerto Rico, the
11 Virgin Islands, Guam, American Samoa, and the
12 Commonwealth of the Northern Mariana Islands,
13 and any other territory or possession of the United
14 States, and any political subdivision of any such
15 place.

16 (8) TRADE ASSOCIATION.—The term “trade as-
17 sociation” means any association or business organi-
18 zation (whether or not incorporated under Federal
19 or State law) that is not operated for profit, and 2
20 or more members of which are manufacturers, mar-

- 1 keters, distributors, advertisers, or sellers of a quali-
- 2 fied product.

Passed the House of Representatives March 10,
2004.

Attest:

JEFF TRANDAHL,
Clerk.

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